IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2354 OF 2004

Hindustan Composites Limited)
(Formerly known as Hindustan Ferodo Ltd.))
L B S Marg,)
Ghatkopar (W),)
Mumbai - 400 086.)..Petitioner

V/s.

1. Mumbai Shramik Sangh, registered)
Trade Union, Quary Road, Bhandup,)
Mumbai 400 078.)

2. Gambir Catering Service,)
503, Dalamal Towers,)
Nariman Point, Mumbai-400 021.)..Respondents

Mr.M.M. Verma with Mr.Rajesh Gehani for the Petitioner.
Mr.Bhavesh Parmar for the Respondent.

CORAM : V.M. KANADE, J.

DATED : JUNE 22, 2007

ORAL JUDGMENT :-

1. Heard the learned Counsel for the petitioner and the learned Counsel for the respondents.

2. By this petition, the petitioner - Hindustan Composites Limited takes exception to the order passed by the Industrial Court, Maharashtra in Complaint (ULP) No.1166/1991 dated 19th April, 2004 whereby the

Industrial Court was pleased to direct the petitioner herein to pay amount of unpaid wages at the rate of 1200/- per month to each of the employees named in the complaint at Annexure ’B" with effect from 1.6.91 to 30.11.91.

FACTS :

3. The petitioner is a public limited company and is carrying on manufacturing activity in its factory at Ghatkopar, Mumbai. In the year 1991, the factory had 1300 workers. The factory was under lock out from 18.10.90 to 14.5.91. A settlement was arrived at between the petitioner and the recognised union on 14.5.91. From 29.8.91, the respondent no.1 filed a complaint being Complaint (ULP) No.1166/91 against the petitioner and respondent no.2 seeking relief of full backwages during the period of lock out. On 17.2.92, a Tripartite settlement was entered into between the petitioner, respondent no.1 and respondent no.2 in which respondent no.2 had undertaken to pay all the dues of the workmen including notice pay, compensation to the

workmen. The respondent no.2 is a registered contractor who was running the canteen and the employees whose names are shown at Annexure "B" to the complaint are employees who are working in the canteen.

4. Before the Tripartite agreement was executed between the parties, respondent no.1 filed a second complaint before the trial Court in complaint (ULP) No.1520/91 in which it was alleged that there was possibility of the canteen contractor terminating the services of the employees and therefore, the trial Court by way of interim relief passed the order of status quo. This second complaint, however, was dismissed for default on 21.12.98 after the Tripartite settlement was taken up on record by the Court.

5. On 3.9.92, a third complaint (ULP) No.1183/92 was filed by respondent no.1 in the trial Court alleging therein that the licensed contractor had failed to pay the second and third instalments of retrenchment compensation and dues which were agreed to pay under the

Settlement dated 17.2.92.

6. The trial Court allowed the said complaint by its order dated 7.6.95 and directed the respondents to pay second and third instalments to the complainant. The petitioner herein challenged this order in this Court vide Writ Petition No.6154/95. On 6.12.2001, the learned Single Judge of this Court (Coram : Smt.Nishita Mhatre, J.) set aside the Order dated 7.6.95 passed in Complaint (ULP) No.1183/92. However, liberty was granted to execute the order against the licensed contractor and its proprietor.

7. Thereafter, the first complaint (ULP) No.1166/91 came up for hearing before the trial Court and the said complaint was allowed by the trial Court by judgment and order dated 19.4.2004 directing the petitioner and the licensed contractor to jointly and severally pay wages from 1.6.91 to 30.11.91.

8. Being aggrieved by the aforesaid order, the petitioner has filed this present petition under Article

226 of the Constitution of India.

SUBMISSIONS :

9. Shri Verma, learned Senior Counsel appearing on behalf of the petitioner submitted that the trial Court had no jurisdiction to entertain the complaint under the provisions of MRTU and PULP Act since there was no relationship of employer and the said workmen who were the employees of the registered contractor. In support of the said submission, he relied on the judgment of the Apex Court in the case of **Vividh Kamgar Sabha V/s. Kalyani Steels Ltd. and another reported in AIR 2001 SC 1534** and the judgment in the case of **Cipla Ltd. V/s. Maharashtra General Kamgar Union and others reported in AIR 2001 SC 1165** and also the judgment in the matter of **Steel Authority of India Ltd. and others, etc. etc. V/s. National Union Water Front Workers and others, etc. reported in AIR 2001 SC 3527.** He submitted that the trial Court had erred in coming to the conclusion that the said judgments of the Apex Court were not applicable to the facts of the present case. He further

submitted that the third complaint which was filed by the Union of India being Complaint (ULP) No.1183/92 initially was allowed by the trial Court by order dated 7.6.95. He submitted that in the said complaint, a specific prayer was made seeking a direction to the petitioner and respondent no.2 to pay second and third instalments of the retrenchment compensation and legal dues as agreed to pay under the Settlement dated 17.2.92. He submitted that this Court had set aside the said order passed by the trial Court by judgment and order dated 6.12.2001 in Writ Petition No.6154/95. He submitted that the order passed by the learned Single Judge had become final as it was not challenged by the respondent no.1 and therefore, the said order was binding on the learned Industrial Court and on that ground alone the complaint ought to have been dismissed. He thereafter submitted that the said 36 workmen had admittedly not been working from 1.6.91 to 30.11.91. He submitted that that being the position, the trial Court could not have relied on Section 21 of the Contract Labour (R&A) Act. He submitted that since this fact itself was not disputed, a complaint under the MRTU and

PULP Act, 1971 could not have been entertained by the Labour Court. He further submitted that even otherwise Section 21(4) of the Contract Labour (R&A) Act, 1970, the employer would become liable if the contractor failed to make payment of wages within the prescribed period.

10. The learned Counsel appearing on behalf of the respondent, on the other hand, submitted that the company had declared a lock out from the period 18.10.90 to 14.5.91 and during this period, canteen facilities were not provided by the company. He submitted that the petitioner being a company having a factory as defined under the Factories Act, it was under a statutory obligation to maintain canteen facilities for its workers and employees. He submitted that though a lock out was lifted with effect from 15.5.91, admittedly 36 workers were not working in the canteen. He submitted that this was admitted by the company in a letter dated 11.7.91 which was issued under the signature of Dr.Vivek Monteireo in which it was specifically contended that these workmen would not be given work. He submitted

that the complaint (ULP) No.1166/92 was filed and a prayer was made in the said complaint for directing the petitioner and respondent no.2 to pay wages from 1.6.91 to the 36 workers who were not paid wages by respondent no.2 as a registered contractor under the Contract Labour (Regulation and Abolition) Act and also by the petitioner since he was a registered principal employer under the Contract Labour Act. It is submitted that therefore, the present complaint viz. complaint (ULP) No.1166/91 was filed seeking wages from the registered contractor and the registered employer. He submitted that the Industrial Court had taken into consideration the judgments of the Apex Court on which reliance was placed by the petitioner herein and had distinguished those judgments and had rightly held that the said judgments are not applicable to the facts of the present case. He submitted that the judgment of the learned Single Judge of this Court was passed in Complaint (ULP) No.1183/92 wherein the prayer was made for the payment of second and third instalments according to the Tripartite agreement. He submitted that the said complaint was not filed under the provisions of Section

21 of the Contract Labour (R&A) Act and therefore, the Industrial Court had correctly held that the judgment delivered by this Court was not binding on the said Court. He relied on the judgment of the Madras High Court in the case of **Ashok Leyland Ltd. V/s. Presiding Officer and Others reported in 2000-III-LLJ (Suppl) Page 240** and the judgment of the Supreme Court in the case of **Senior Regional Manager, Food Corporation of India, Calcutta V/s. Tulsi Das Bauri and others reported in 1997-II-LJ Page 747 (SC).** He also relied on the judgment of the Allahabad High Court reported in **1997(76) FLR Page 491 in the case of M/s.Swadeshi Cotton Mills, Kanpur V/s. The Labour Commissioner, Kanpur and others.** He also relied on the judgment of this Court in the case of **Doodh Kamgar Sabha V.s. Zurisingh Beechusing and Co. and another reported in 2004(4) Mh.L.J. Page 449.**

FINDINDG AND CONCLUSION :

11. I have given my anxious consideration to the submissions made by the learned Counsel appearing on

behalf of the petitioner and the learned Counsel appearing on behalf of the respondents. The learned Counsel appearing on behalf of the petitioner has essentially made three submissions, firstly, regarding maintainability of the complaint in view of the judgment of the Apex Court, secondly, the maintainability of the complaint under MRTU and PULP Act particularly when the workers had not worked during the relevant period and thirdly, the applicability of Section 21 of the Contract Labour (R&A) Act. To appreciate the rival submissions, it has to be seen what were the averments made in the complaint which is filed by the respondent no.1. It was essentially alleged that the company had maintained canteen for the workmen working in the company and the canteen was functioning for 28 years and that the lock out was declared by the company and after the lock out was lifted, the company refused to allow these workmen to work in the canteen. It was further alleged that this amounted to illegal lock out and unfair labour practise under Item 6 of Schedule II of the Act. It was further alleged that in the agreement between the complainant and the respondents, it was agreed that the

efforts would be taken to give ultimate work to the surplus workmen, however, the company failed and neglected to abide by the agreement, as a result of this, workmen were kept out of work and therefore, it was prayed that the company and the registered contractor may be directed to pay full wages to the workmen from 1.6.91.

12. Certain facts which are admitted and have not been disputed by both the parties are that respondent no.2 is the registered contractor and that the company was under a legal obligation to provide canteen facilities to its workmen. In the light of averments made in the complaint and the written statement, it has to be seen whether this complaint was maintainable under the MRTU and PULP Act and also it has to be examined whether provisions of Section 21 of the Contract Act would be applicable to the facts and circumstances of the present case. At this stage, it would be relevant to have a look at the provisions of Section 21 of the said Act which reads thus :-

"**21. Responsibility for payment of wages.-**

(1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contract and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor."

13. A perusal of the said section clearly discloses that a statutory liability for the payment of wages is not only on the registered contractor but is also on the registered employer which in this case is a petitioner company. It has to be noted that the workmen had not

asked for a declaration that the contract which was entered into between the company and the licensed and registered contractor is sham and bogus but it has been alleged in the complaint that since the wages for the period from 1.6.91 to 30.11.91 having not been paid by the licensed contractor, it was a statutory liability of the registered employer to pay the said wages. In view of this averment made in the complaint, I am of the view that the complaint was maintainable under the MRTU and PULP Act. In the present case, there is no dispute regarding the relationship of employer and employee between the workmen and the company. If the complaint had been filed alleging the existence of this relationship, possibly it could have been argued that the complaint is not maintainable. Therefore, the Industrial Court has correctly held that the judgments of the Apex Court in **Kalyani Steels (supra), Cipla Ltd. (supra) and Steel Authority of India (supra)** were not applicable to the facts of the present case. In the present case, the specific case of the Union is that 36 workmen were not allowed to work during the period from 1.6.91 to 30.11.91 though they were willing to work. No

efforts were taken out by the company as agreed by them in the settlement to provide alternate work to these workmen. Under these circumstances, it cannot be said that the workmen had not worked during the said period and therefore, they were not entitled to claim wages for the aforesaid period. There is ample evidence and material on record to indicate that the workmen were not allowed to resume work in the canteen. The submission of the learned Counsel for the petitioner, Shri Verma, therefore, cannot be accepted. The ratio of the judgment on which reliance was placed by the learned Counsel appearing on behalf of the respondent therefore, will squarely apply to the facts of the present case. In the case of **Doodh Kamgar Sabha (supra),** the learned Single Judge of this Court has held that the principle of "no work no wages" would not be applicable where the workmen were allowed to work. In the said case, the workmen were not allowed to work from 14.4.93 and therefore, the Court held that this amounted to a declaration of illegal lock out so far as the said workmen are concerned and in this context, therefore, the principle of "no work no pay" would not apply. The

ratio of the said judgment squarely applies to the facts of the present case. Similarly, in the case of **Senior Regional Manager, Food Corporation of India, Calcutta (Supra)** it has been held that under the provisions of Section 21(1), (2) and (4), the principal employer was under a statutory obligation to ensure that the payment of wages not made in accordance with law. The Apex Court while interpreting Section 21 has observed as under :-

> "Section 21 postulates the responsibility for payment of wages. Under sub-section (1) a contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed. Under sub-section (4), in case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deducting from any amount payable to the contractor under any contract or as a debt payable by the contractor. That liability has been prescribed under sub-section 2 thereof which says that every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty

> of such representative to certify the amounts paid as wages in such manner as may be prescribed."

The Madras High Court in the case of **Ashok Leyland Ltd. (supra)** has also taken a similar view. The Allahabad High Court in the case of **M/s.Swadeshi Cotton Mills, Kanpur**, **(supra)** also has held that in respect of payment of wages, the ultimate responsibility shall be on the principal employer. The ratio of these judgments squarely apply to the facts of the present case.

14. The submission of the learned Counsel Shri Verma appearing on behalf of the petitioner that it was not open for the respondent no.1 to pursue his first Complaint (ULP) No.1166/91 after the second complaint (ULP) No.1183/92 was dismissed by the learned Single Judge of this Court in Writ Petition No.6154/85, also cannot be accepted. It has to be noted here that in the said complaint, the Union was seeking payment of second and third instalments of the retrenchment compensation and legal dues agreed under the Settlement dated 17.2.92 which had been filed in Complaint (ULP) No.1520/91 and

in that context, the learned Single Judge of this Court observed that the said complaint was not maintainable after relying on certain clauses in the said settlement. The present case, however, pertains to the payment of wages which was not given by the registered employer to the workmen. The respondent no.1 was, therefore, not seeking the payment of second and third instalments as agreed in the settlement but on the other hand, was claiming wages for the period between 1.6.91 to 30.11.91. The Industrial Court, therefore, in my view, has correctly held that the judgment and order in Writ Petition No.6154/95 was not binding on the Industrial Court. Under the circumstances, the submissions made by the learned Counsel Shri Verma on all the three counts cannot be accepted. There is absolutely no reason to interfere with the order passed by the Industrial court in Complaint (ULP) No.1166/91 while exercising the writ jurisdiction under Article 226 the Constitution of India.

15. Writ Petition, accordingly is dismissed. Rule is discharged. Under the circumstances, there shall be

no order as to costs.

16. At this stage, the learned Counsel appearing on behalf of the petitioner seeks stay of the impugned order. Application for stay is rejected.

(V.M. KANADE, J.)